



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2005

Mr. Darrell G-M Noga
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OR2005-2736

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221186.

The City of Coppell (the "city") received a request for information related to four specified incidents and a named individual, including police videos and 9-1-1 calls. You inform us that "'front page' offense information, any arrest warrants, any arrest warrant affidavits, any court documents, and all information reports related to this Request will be, or have been, released to the Requester." You state that the city does not have any responsive 9-1-1 information.¹ You further inform this office that a portion of the requested information was the subject of a previous ruling from this office. In Open Records Letter No. 2005-1152 (2005), we concluded that, with the exception of basic information, the information at issue is excepted from disclosure under section 552.108(a)(1). We understand you to represent that the four criteria for a "previous determination" established by this office in Open Records Decision

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ diss'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

No. 673 (2001) have been met.² Accordingly, we conclude that the city may continue to rely on our decision in Open Records Letter No. 2005-1152 with respect to the information that is responsive to this request and that was previously addressed in that decision. *See Gov't Code § 552.301(f)*; Open Records Decision No. 673 (2001). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information that we have marked constitute an arrest warrant and supporting affidavit. The 78th Legislature amended article 15.26 of the Code of Criminal Procedure to provide:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26. Thus, article 15.26 of the Code of Criminal Procedure makes the marked arrest warrant and supporting affidavit public. As a general rule, the exceptions to disclosure found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Accordingly, we conclude that the marked arrest warrant and supporting affidavit must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure.

We next note that the submitted information contains emergency medical services ("EMS") records. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See Open Records Decision No. 598 (1991)*. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical

²The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See Open Records Decision No. 673 (2001)*.

supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note, however, that records that are confidential under section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. We have marked the EMS records that are subject to chapter 773 of the Health and Safety Code. If section 773.092 applies in this instance, the city must release these marked EMS records to the requestor. *See* Health & Safety Code §§ 773.092, .093; *see also* Open Records Decision No. 632 (1995). Otherwise, the city must withhold these marked EMS records pursuant to section 773.091(b) of the Health and Safety Code, except for the information in these records that is not confidential under section 773.091(g).

You specifically contend that some of the submitted information is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. Based on your representation that report number P4026195 relates to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(1) to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). The

city may therefore withhold most of the information at issue pursuant to section 552.108(a)(1) of the Government Code.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including the arrestee's social security number. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, you must release the types of information that are considered to be basic information from report number P4026195, even if this information is not actually located on the front page of an incident report. Although section 552.108(a)(1) authorizes you to withhold the remaining information in report number P4026195 from disclosure, you may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Although the arrestee's social security number is basic information, it must be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I).³ These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that such information is not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Although the city argues that telephone numbers and addresses contained in the submitted information should be excepted from

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential.

disclosure under section 552.101 and common law privacy, this office has stated on several occasions that an individual's home address and telephone number generally are not protected by constitutional or common-law privacy under section 552.101. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). We also have frequently stated that a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. *See* Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because the party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information is not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Therefore, the city may not withhold the telephone numbers and addresses under section 552.101.

You next claim that some of the submitted information is excepted from public disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for that information. *See* Open Records Decision No. 530 at 5 (1989). We note, however, that the protections of section 552.117 apply only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). The information you seek to withhold pursuant to this exception is contained in police reports. Because the city does not hold this information as the employer of any of the individuals at issue, the city may not withhold it under section 552.117 of the Government Code.

Finally, you assert that section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the information in the submitted documents that the city must withhold pursuant to section 552.130.

In summary, the marked arrest warrant and supporting affidavit must be released to the requestor pursuant to article 15.26 of the Code of Criminal Procedure. If section 773.092 of the Health and Safety Code applies in this instance, the city must release the EMS records that we have marked to the requestor. Otherwise, with the exception of the information in these records that is not confidential under section 773.091(g), the city must withhold these

marked EMS records pursuant to section 773.091(b) of the Health and Safety Code. Except for basic information, which must be released, report number P4026195 may be withheld under section 552.108 of the Government Code. Social security numbers, including that of an arrestee, may be confidential under federal law. We have marked the information in the submitted documents that the city must withhold pursuant to section 552.130. The remaining submitted information must be released to the requestor.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

⁴As our ruling is dispositive, we do not address your remaining claims.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 221186

Enc. Submitted documents

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(w/o enclosures)